

2300 Lake Elmo Drive
Billings, MT 59105

NOTICE OF DECISION

April 4, 2002

TO: Environmental Quality Council
Director's Office, Dept. of Environmental Quality
Montana Fish, Wildlife & Parks
 Director's Office
 Parks Division
 Fisheries Division
 Wildlife Division
 Montana Historical Society, State Preservation Office
Janet Ellis, Montana Audubon Council
Montana Wildlife Federation
Montana State Library
George Ochenski
Montana Environmental Information Center
Wayne Hirst, Montana State Parks Foundation
Montana Parks Association (land acquisition projects)
Don Kendall, DNRC Area Manager, Southern Land Office
County Commissioner
Dan Walker, FWP Commissioner

Lands Section
Design & Construction
Legal Unit
Regional Supervisors

Ladies and Gentlemen:

A Draft Environmental Assessment (EA) was prepared for the Town of Lavina's plan to upgrade their wastewater treatment system and run a new 8" discharge pipe out to the Musselshell River. The draft EA was not circulated, because the project was not considered controversial or likely to cause significant impacts.

Fish, Wildlife and Parks has decided to issue a Stream Protection Act Permit for the project as proposed.

This project is subject to appeal, which must be submitted to the FWP Director in writing, and postmarked within 30 days of the date of this decision notice. The appeal must specifically describe the basis of the appeal, explain how the appellant has previously commented to the department or participated in the decision-making process, and lay out how FWP might address the concerns in the appeal. If you have questions regarding this decision notice, please contact me at 247-2951 or hnyberg@state.mt.us.

Sincerely,

Harvey E. Nyberg
Regional Supervisor

DEPARTMENT OF FISH, WILDLIFE AND PARKS
1420 E 6th Ave, PO Box 200701 Helena, MT 59620-0701
(406) 444-2535

ENVIRONMENTAL ASSESSMENT

Project Title Town of Lavina Wastewater Discharge (Golden Valley County)

Division/Bureau Fisheries/Management

Program Fisheries

Description of Project The town of Lavina will upgrade their wastewater treatment system and will be running a new 8" discharge pipe out to the river. The pipe will be trenched through the bank of the Musselshell River downstream of town (T6n, R22E, Sec 11), and the bank and outflow will be stabilized and armored with grouted rip rap.

POTENTIAL IMPACT ON PHYSICAL ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Terrestrial & aquatic life and habitats				X		
2. Water quality, quantity & distribution				X		
3. Geology & soil quality, stability & moisture				X		
4. Vegetation cover, quantity & quality				X		
5. Aesthetics			X			I-5
6. Air quality				X		
7. Unique, endangered, fragile, or limited environmental resources				X		
8. Demands on environmental resources of land, water, air & energy				X		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
9. Historical & archaeological sites				X		

POTENTIAL IMPACTS ON HUMAN ENVIRONMENT

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
1. Social structures & mores				X		
2. Cultural uniqueness & diversity				X		
3. Local & state tax base & tax revenue				X		
4. Agricultural or industrial production				X		
5. Human health				X		
6. Quantity & distribution of community & personal income				X		
7. Access to & quality of recreational and wilderness activities				X		
8. Quantity & distribution of employment				X		
9. Distribution & density of population & housing				X		
10. Demands for government services				X		
11. Industrial & commercial activity				X		
12. Demands for energy				X		

	MAJOR	MODERATE	MINOR	NONE	UNKNOWN	COMMENTS ON ATTACHED PAGES
13. Locally adopted environmental plans & goals				X		
14. Transportation networks & traffic flows				X		

Other groups or agencies contacted or which may have overlapping jurisdiction US Army Corps of Engineers

Individuals or groups contributing to this EA

Recommendation concerning preparation of EIS Unnecessary; no significant impacts

EA prepared by : Ken Frazer, Regional Fisheries Biologist
Montana Fish, Wildlife and Parks
2300 Lake Elmo Drive
Billings, MT 59105
(406) 247-2963

Date: March 26, 2002

COMMENTS

I-5. The grouted rip rap may stand out since most of the stream bank in this area contains very little rock. The size of the rip rapped area will be small and it will conform to the existing bank contour so impacts will be minor.

APPENDIX A PRIVATE PROPERTY ASSESSMENT ACT CHECKLIST

The 54th Legislature enacted the Private Property Assessment Act, Chapter 462, Laws of Montana (1995). The intent of the legislation is to establish an orderly and consistent process by which state agencies evaluate their proposed actions under the "Takings Clauses" of the United States and Montana Constitutions. The Takings Clause of the Fifth Amendment of the United States Constitution provides: "nor shall private property be taken for public use, without just compensation." Similarly, Article II, Section 29 of the Montana Constitution provides: "Private property shall not be taken or damaged for public use without just compensation..."

The Private Property Assessment Act applies to proposed agency actions pertaining to land or water management or to some other environmental matter that, if adopted and enforced without

compensation, would constitute a deprivation of private property in violation of the United States or Montana Constitutions.

The Montana State Attorney General's Office has developed guidelines for use by state agency to assess the impact of a proposed agency action on private property. The assessment process includes a careful review of all issues identified in the Attorney General's guidance document (Montana Department of Justice 1997). If the use of the guidelines and checklist indicates that a proposed agency action has taking or damaging implications, the agency must prepare an impact assessment in accordance with Section 5 of the Private Property Assessment Act. For the purposes of this EA, the questions on the following checklist refer to the following required stipulation(s):

(List any mitigation/stipulations required, or note "None".)

**DOES THE PROPOSED AGENCY ACTION HAVE TAKINGS IMPLICATIONS
UNDER THE PRIVATE PROPERTY ASSESSMENT ACT?**

YES	NO	
_____	<u> X </u>	1. Does the action pertain to land or water management or environmental regulation affecting private real property or water rights?
_____	<u> X </u>	2. Does the action result in either a permanent or indefinite physical occupation of private property?
_____	<u> X </u>	3. Does the action deprive the owner of all economically viable uses of the property?
_____	<u> X </u>	4. Does the action deny a fundamental attribute of ownership?
_____	<u> X </u>	5. Does the action require a property owner to dedicate a portion of property or to grant an easement? [If the answer is NO , skip questions 5a and 5b and continue with question 6.]
_____	_____	5a. Is there a reasonable, specific connection between the government requirement and legitimate state interests?
_____	_____	5b. Is the government requirement roughly proportional to the impact of the proposed use of the property?
_____	<u> X </u>	6. Does the action have a severe impact on the value of the property?
_____	<u> X </u>	7. Does the action damage the property by causing some physical disturbance with respect to the property in excess of that sustained by the public generally? [If the answer is NO , do not answer questions 7a-7c.]

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| _____ | _____ | 7a. Is the impact of government action direct, peculiar, and significant? |
| _____ | _____ | 7b. Has government action resulted in the property becoming practically inaccessible, waterlogged, or flooded? |
| _____ | _____ | 7c. Has government action diminished property values by more than 30% and necessitated the physical taking of adjacent property or property across a public way from the property in question? |

Taking or damaging implications exist if **YES** is checked in response to question 1 and also to any one or more of the following questions: 2, 3, 4, 6, 7a, 7b, 7c; or if **NO** is checked in response to questions 5a or 5b.

If taking or damaging implications exist, the agency must comply with Section 5 of the Private Property Assessment Act, to include the preparation of a taking or damaging impact assessment. Normally, the preparation of an impact assessment will require consultation with agency legal staff.